

**DEPARTMENT OF HEALTH
STATE OF HAWAII**

RULES OF PRACTICE AND PROCEDURE

**PART A
RULES OF GENERAL APPLICABILITY**

1. These rules are made pursuant to the Hawaii Administrative Procedure Act (Act 103, S.L. 1961), Chapter 14A, R.L.H. 1955 (1960 Supplement) and Chapter 46, R.L.H. 1955, as amended, and other related laws and shall govern procedure before the Department of Health of the State of Hawaii. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding authorized by law.
2. Definitions
 - (a) As used in the rules and regulations prescribed by the Department of Health, unless the context specifically requires:
 - (1) **Department.** The term "Department" means the Department of Health.
 - (2) **Director.** The term "Director" means the Director of Health.
 - (3) **Hearing.** The term "hearing" means any formal proceeding for the determination of the legal rights of specific parties which is authorized by law or rules in a matter which is initiated by action taken, or to be taken, by the Department or which may be initiated by a petition or application for the granting of any right, privilege, authority or relief from or after administrative action.
 - (4) **Contested case.** The term "contested case" means any proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after opportunity for hearing before the Director.
 - (5) **Rulemaking proceeding.** The term "rulemaking proceeding" means any formal action for the adoption, amendment or repeal of any rule or regulation of the Department.
 - (6) **Presiding officer.** The term "presiding officer" means the person conducting the hearing and may be the Director of Health or his representative.
 - (7) **Party.** The term "party" shall mean each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a hearing.
 - (8) **Person.** The term "person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than

agencies.

- (9) **Petitioner.** "Petitioner" is a person making or on whose behalf a petition or application is made for a hearing which the Director may hold under statutory or other authority delegated to him or for a declaratory ruling, as to the applicability of any statutory provision or of any Department rule or order, or for the adoption, amendment or repeal of any Department rule or regulation.
- (10) **Respondent.** The term "respondent means the party in a contested case against whom an order to show cause has been issued by the Director on his own initiative or a notice of hearing has been issued on the basis of a complaint filed with the Director.
- (11) **Complainant.** The term "complainant" means the person, agency or officer upon whose complaint the proceeding is instituted.
- (b) Unless otherwise specifically stated, the terms used in rules and regulations promulgated by the Department pursuant to powers granted by statute shall have the meaning defined by such statute.
- (c) A rule or regulation which defines a term without express reference to the statute or to the rules and regulations, or to a portion thereof, defines such terms for all purposes as used both in the statute and in the rules and regulations, unless the context otherwise specifically requires.
- (d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may be applied to females.

3. The Department

- (a) Office. The principal office of the Department is at Honolulu, Hawaii. All communications to the Department shall be addressed to the Director of Health, Department of Health, State of Hawaii, Honolulu, Hawaii, unless otherwise specifically directed.
- (b) Hours. For the purpose of these rules, the offices of the Department shall be open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays, unless otherwise provided by statute or executive order.
- (c) Requests and submittals. All documents required to be filed herein shall be filed with the Director at Honolulu, Hawaii, within such time limits as prescribed by law, rules and regulations or by order of the Department.

PART B

PUBLIC RECORDS

1. The term "public records" as used in this part is defined as in section 7A-1(b), R.L.H. 1955 (1960 Supplement) and shall include all rules, regulations, written statements of policy or interpretation formulated, adopted or used by the Department, all final opinions and orders, and the minutes of meetings of the Board of Health, but shall not include any matter or records accorded confidential treatment pursuant to statute, other laws of the State and rules of the Department.
2. All requests for public records shall be made in writing to the Director. Such writing shall identify the record or describe the character of the record, the purpose for which the request is made, and the use or anticipated use for which the record is desired, including persons or agencies to which such record or information from the record may be made available and including court action or anticipated court action for which such record may be used. Such requests shall be in ink or typewritten and must be sign in ink by the requesting party or his duly authorized agent or attorney. For good cause, the Director may deny such requests.
3. When permitted, all public records will be available for inspection in the offices of the Department, Honolulu, Hawaii, during established office hours unless public inspection of such records is in violation of any state or federal law or rules of the Department; provided that, except where such records are open under any rule of court, the attorney general may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the Department is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the right of privacy or the character, reputation or business of any person.
4. Public records printed or reproduced by the Department shall be given to any person upon proper request and the Department may require payment of the actual cost thereof.
5. Requests for public information, for permission to inspect official records or for copies of public records will be handled with due regard for the dispatch of other public duties.

PART C

HEARINGS ON CONTESTED CASES

1. General
 - (a) The Department may on its own motion or on petition of any interested person or an agency, of the State or County government, hold a hearing on a contested case as is required by law or rules of the Department. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the

Department shall, unless specifically prescribed in these rules or by the Hawaii Administrative Procedure Act, be such as in the opinion of the Department will best server the purposes of such hearings. Also, upon respondent's request, any rule contained in the Rules of Practice and Procedure, may be suspended or waived by the Department or the presiding officer to prevent undue hardship in any particular instance.

2. Commencement

- (a) A hearing on a contest matter shall be commenced by the Department on its own motion or upon the complaint or application of any interested person or agency, of the State or County governments, when the processing of such complaint or application necessitates such a hearing.
- (b) No hearing on a contested case shall be held until due notice shall have been given to all parties as provided in the Hawaii Administrative Procedure Act, Act 103, L.L. 1961.
- (c) A complaint or application by an aggrieved person or proper party or by an interested agency, of the State or County governments, requesting such a hearing shall contain concise statements of: (1) the legal authority under which the proceeding, hearing or action is to be held or made, (2) the disagreement, denial, grievance or such matter which is being contested by the petitioner or applicant, (3) the basic facts and issues raised, and (4) the relief to which the party, petitioner or applicant deems himself entitled. The Department may prepare departmental forms which may be substituted for any petition or application which may be required for any authorized proceedings pursuant to law or rules.
- (d) The Director shall conduct the hearings on a contested case and shall render the decision and shall issue such orders and take such actions as may be required; provided that the Director may designate a representative who shall be presiding officer and shall conduct such hearings and shall make his recommendations in writing to the Director, which recommendations shall include recommendations as to findings of fact and conclusions of law. The Director shall then render the decisions as to findings of fact and conclusions of law and shall issue such orders and take such actions as may be further required.
- (e) In all such hearings, the presiding officer shall have the power to administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, to take depositions and certify to official acts, and to perform such other duties necessary for the proper conduct of such hearings.
- (f) Any rule of these Rules of Practice and Procedure may be suspended or waived by the Department or by the presiding officer, before whom the matter is heard, to prevent undue hardship in any particular instance.
- (g) Necessary expenses of or in connection with any such hearings shall be payable from

the funds appropriated for expenses of the Department.

3. Appearances before the Department

- (a) An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona fide officer or employee of a corporation or trust or association may represent the corporation, trust or association and an officer or employee of an agency of the state or a political subdivision of the state may represent such agency in any hearing before the Department.
- (b) A person may be represented by or with counsel in any hearing under these rules.
- (c) A person may be represented in any hearing except as stated in paragraphs (a) and (b) of this section.
- (d) When an individual acting in a representative capacity appears in person before the Department, his personal appearance or signature shall constitute a representation to the Department that under the provisions of these rules and the law, he is authorized and qualified to represent the particular person on whose behalf he acts. The Department may at any time require any person acting in a representative capacity to show proof of his authority and qualification to act in such capacity.
- (e) No person who has been associated with the Department as an officer, employee or counsel thereof shall be permitted to appear before the Department in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the Department at the time of his association with the Department unless he shall first have obtained the written consent of the Director upon a verified showing that he did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during his association with the Department.
- (f) No person appearing before the Department in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would himself be precluded by this section from appearing before the Department in such proceeding or matter.

4. Filing of documents

- (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed in any hearing shall be filed with the Director or as instructed by the Director. Such papers may be sent by mail or hand-carried to the Department in Honolulu, Hawaii, within the time limit, if any, or as set forth in any law, rule or regulation, for such filing. The date on which the papers are actually received by the Department or at the hearing shall be deemed to be the date of filing.
- (b) All papers filed with the Department shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8 1/2" x 14" in size except that tables, maps, charts and other

documents may be larger, folded, if possible, to the size of the documents to which they are attached.

- (c) All papers must be signed in ink by the party signing the same or his duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.
 - (d) Unless otherwise specifically provided by a particular rule, regulation or order of the Department, an original and five copies of all papers shall be filed.
 - (e) The initial document filed by any person in any hearing shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed in the proceedings.
- 5. Docket. The Director or his representative shall maintain a docket of all contested cases and each case shall be assigned a number.
 - 6. Computation of time. In computing any period of time prescribed or allowed by these or other applicable rules or regulations or order of the Department, the day of the act, event or default, after which the designated period of time is to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less. A half holiday shall be considered as other days and not as a holiday.
 - 7. Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order or regulation, the presiding officer may (1) before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable.
 - 8. Amendment of documents and dismissal. If any document initiating, or filed in, a contested case is not in substantial conformity with the applicable rules or regulations of the Department as to the contents thereof, or is otherwise insufficient, the Department, on its own motion, or on motion of any party, may strike or dismiss such document, or require its amendment. If amended, the document shall be effective as of the date of the original filing.
 - 9. Retention of documents by the Department. All documents filed with or presented to the Department may be retained in the files of the Department. However, the Department may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents.
 - 10. Public Information.

- (a) Unless otherwise provided by statute, rule or order of the Department, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map exception brief, memorandum or other document filed with the Department pursuant to the requirements of a statute or rule or regulation or order of this Department shall be available for inspection by the public after final decision.
 - (b) Confidential treatment may be requested for good cause where authorized by statute. For good cause shown, the presiding officer shall grant such request.
 - (c) When permitted or authorized, matters of public records may be inspected in the offices of the Department in Honolulu during regular office hours.
11. Decision. All final order, opinions or ruling entered by the Department, in a hearing shall be served upon the parties or persons participating in the hearing by regular mail or personal delivery by the Department.
12. Substitution of parties. Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in case of death of a party substitution may be ordered without the filing of a motion.
13. Consolidations. The presiding officer, upon his own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more hearings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the hearings.
14. Intervention. Applications to intervene in a proceeding shall comply with Part C, Section 4, of these Rules and shall be served upon all parties. Applications for intervention will be granted to persons properly seeking and entitled as of right to be admitted as a party; otherwise at the discretion of the presiding officer, they may be denied. As a general policy, such applications shall be denied unless the petitioner shows that he has an interest in a question of law or fact involved in the contested matter.

A state or county medical association or society of Hawaii shall be permitted to intervene in any contested case pertaining to the license of a physician upon the showing that its intervention will serve a public purpose.

PART D

PROCEDURES FOR RULEMAKING PROCEEDINGS

1. Notice of proposed rulemaking
- (a) When upon its own motion, the Department proposed to issue, amend or repeal a rule or regulation, a notice of the proposed rulemaking action will be published at least once in a newspaper of general circulation in the State at least 20 calendar days prior

to the date of the public hearing. Notice shall be mailed to all persons who make a timely request for advance notice of such rulemaking hearing.

- (b) A notice of the proposed issuance, amendment or repeal of a rule or regulation will include:
 - (1) A statement of the date, time, and place where the public hearing shall be held.
 - (2) Reference to the authority under which the issuance, amendment, or repeal of a rule or regulation is proposed.
 - (3) A statement of the substance of the proposed rulemaking action.
 - (4) Docket number specifically assigned to the rulemaking hearing.
- 2. Further notice of hearing. For any rulemaking hearing where the Department deems it warranted, an additional notice of the public hearing will be issued by publication thereof in a newspaper of general circulation in the State.
- 3. Conduct of hearing
 - (a) Presiding officer. Each such hearing shall be presided over by the Director or his representative. The hearing shall be conducted in such a way to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The presiding officer shall have authority to take all actions necessary to the orderly conduct of the hearing.
 - (b) Hearing procedure. At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.
 - (c) Submission of evidence. All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness shall, before proceeding to testify, state his name, address, and whom he represents at the hearing, and shall give such other information respecting his appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the presiding officer, but cross-examination by private persons shall not be permitted except if the presiding officer expressly permits it.
 - (d) Oral and written presentation at such hearing. All interested persons or agencies of the State or political subdivisions of the State will be afforded an opportunity to submit data, views or arguments which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the Department within five calendar days following the close of public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. Written protest, comments or recommendations or replies thereto will

not be accepted unless an original and five copies are filed. The period for filing written protest, comments or recommendations may be extended by the presiding officer for good cause.

- (e) Transcript of the evidence. Unless otherwise specifically ordered by the presiding officer, testimony given at a rulemaking hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, five copies of the exhibits shall be submitted.
 - (f) Continuance of hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but such time and place may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.
- 4. Department action. At the close of the final public hearing, the presiding officer shall announce the decision, or he shall announce the date when the decision shall be made.
 - 5. Emergency rulemaking. Notwithstanding the foregoing rules, if the Department finds that an imminent peril to public health, safety, or morals requires adoption, amendment or repeal of a rule or regulation upon less than twenty days' notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than 120 days without renewal.
 - 6. Petitions for adoption, amendment or repeal of rules.
 - (a) Scope. Any interested person or any agency of the State or County government may petition the Department for the issuance, amendment, modification or repeal of any rule or regulation which is designed to implement, interpret, or prescribe law, policy, organization, procedure or practice requirements of the Department.
 - (b) Form and contents. Petitions for such rulemaking action shall conform to the requirements of Part C, Section 4, of these Rules. Such petition for a change of rules shall set forth the text of any proposed rule or amendment desired or specify the rule the repeal of which is desired and state concisely the nature of the petitioner's interest in the subject matter and his reasons for seeking the issuance, amendment or repeal of the rule and shall include any facts, views, arguments and data deemed relevant by petitioner. The Department may also require the petitioner to serve other persons or governmental agencies known to be interested in the proposed rulemaking. No request for the issuance, amendment, modification or repeal of a rule which does not conform to the requirements set forth above will be considered by the Department.
 - (c) Procedure. A petition for a change of rules will be given a docket number and will become a matter of public record upon filing. The Department shall within thirty days following the filing of the petition either deny the petition in writing or may initiate a public rulemaking procedure. No public hearing, oral argument, or other

form of proceedings, will be held directly on any such petition, but if the Department determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of a public hearing, the procedures to be followed will be as set forth in Section 1 to 5 of this Part of these Rules. Where the Department determines that the petition does not disclose sufficient reasons to justify the institution of a public rulemaking action, or where the petition for a change of rules fails in material respect to comply with the requirements of these rules, petitioner will be so notified together with the grounds for such denial. The provisions of this section shall not operate to prevent the Department, on its own motion, from acting on any matter set forth in any petition.

PART E

SPECIAL PROCEEDINGS

1. Petition for declaratory rulings

- (a) Form and contents. On petition of an interested person, the Department may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the Department. Petitions for the issuance thereof shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a detailed statement of all the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of Part C, Section 4, of these Rules.
- (b) Additional data and supporting authorities. The Department, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.
- (c) Dismissal. The Department may dismiss a petition for a declaratory ruling wherein the petitioner refuses to comply with the requirements of this part in a material respect.
- (d) Consideration. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the Director may in his discretion order such proceeding set down for hearing. Any petitioner or party in interest, who desires a hearing on a petition for declaratory ruling, shall set forth in detail in his request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities will not permit the fair and expeditious disposition of the petition, and, to the extent that such request for hearing is dependent upon actual assertion, shall accompany such request by affidavit establishing such facts. In the event a hearing is ordered by the Director, Part C of these Rules shall govern the proceedings.
- (e) Declaratory ruling on Department's own motion. Notwithstanding the other provisions of this part, the Department may on its own motion or upon request, but

without notice and hearing, issue a declaratory order to terminate a controversy or to remove uncertainty.

2. Obtaining necessary information. The Department may on its own motion or upon the complaint or application of any interested person or an agency of the State or County government hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules and regulations. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the Department shall, unless specifically prescribed in these rules or by Hawaii Administrative Procedure Act, be such as in the opinion of the Department will best serve the purposes of such proceedings. Also, any rule of these Rules of Practice and Procedure, may be suspended or waived by the Department or presiding officer before whom the matter is heard to prevent undue hardship in any particular instance.

I, Richard K.C. Lee, M.D., Director of Health, hereby certify that the foregoing Rules of Practice and Procedure were adopted by the Department of Health of the State of Hawaii on the 27th day of April 1962.

RICHARD K.C. LEE, M.D.
Director of Health

Approved as to Form
June 15, 1962

SHIRO KASHIWA
Attorney General